[illegible]

[illegible] G.O. [illegible] [illegible] [illegible] [illegible]

[illegible] G.O. [illegible] had recorded in an [illegible]:

"The Gibbys themselves say they came from the north and northeast, having their land with stock from the Swedes, an honourable order of stewards." (1)

1. In "The Native Law of the northern Gibbys of British East Africa," Journal of the African Society, April 1910.

and again:

"As far as can be ascertained after the lapse of time, all the land in the occupation of the northern Gibbys was purchased with live-stock by their grandparents or great-grandparents, who bought for the Swedes an honourable order occupied and claimed none the land up to within half a century ago." (2)

2. In "Further Notes on the northern Gibbys of British East Africa," Journal of the African Society, April 1911.

[illegible] G.W.G. [illegible] writes of the present [illegible] and [illegible] divisions of the Gibbys district:

"There is another explanation of individual land tenure which arises from the description of the method by which the present 'holdings' were established. The Swedes from whom the Gibbys purchased the right to [illegible] and cultivate, and the right to live at peace had been [illegible] partitioned on the basis [illegible]. No Swede might [illegible] another one without leave, nor could he hang his [illegible] elsewhere than in his own [illegible]. When the Gibbys came, the emigrant [illegible] of the family purchased the aforesaid rights over a portion of [illegible]. The Swedish boundaries were well known and [illegible] of ancient stone [illegible] and [illegible]. These boundaries were adopted by the Gibbys. Naturally as he [illegible] the Swede, the [illegible] were further in, and the [illegible] of trees between the [illegible] and the [illegible] became [illegible] and relatives to the Swede owner and he would be more willing to sell [illegible] and to the [illegible] next on." (3)

3. Quoted by Brock, op. cit.

[illegible] [illegible] [illegible] [illegible]

4

In an [illegible] the Rev. Charles Hawtrey wrote a paper, "The [illegible] and Laws of some Swazi Tribes in East Africa," from which the following is an extract:

"As the Kibeys advanced they encountered the Swazis ... They appear to have found it more politic to purchase the land from them than to conquer it, and therefore the more wealthy Kibeys bought the land ridge by ridge, and the purchases became more numerous, after there upon the whole country in that way possible. In recognition of the service that chiefs have rendered [illegible] in the way. In Swazis District, many of the original purchasers are still alive, and an old Swazi who lives on the Swazis River can there each parcel of land which he sold and also he kept for himself - the several of the Swazis were also enough to create a part of their land, and to prevent [illegible] there have become the recognised landlords."

Hawtrey made a thorough investigation of the mode of acquisition in the Segovia sub-district in 1911. He says:

"My investigations were made in each location separately, and several thousands of witnesses were individually or collectively examined. The result of my inquiries ... was an unanimous agreement that all arable land was originally purchased by the [illegible] Kibeys from the Swazis [illegible] when they found it [illegible] [illegible]." (1)

1. [illegible]

In a footnote he adds:

"I have no evidence as to how the Swazis obtained the land. The origin of these people is still somewhat wrapped in mystery, but it is to be presumed that they followed the custom of previous tribes which they displaced, e.g., the 'wild' of Kisii. Whatever [illegible], the [illegible] claim to have bought the land from 'human kitten' to the Kibeys District" [illegible] i.e. the Segovia sub-district [illegible] the emigration taking in excess, it could naturally be [illegible] that they found there. The payments were originally made [illegible] in a 'piece of ground'. The [illegible] then sold [illegible] from the [illegible] to the white man."

Unfortunately Beech's record was not as thorough as his investigation, the following is a summary of the published results.

Location	Number of Sellers	Number of Holdings	Acreage	Notes
(14)	?	(?)	17,000 acs.	Wives who had purchased by one Kikuyu from one Swahili.
(?)	0	(?)	5,000	Two of the sellers were Scottish,
(?)	?	(?)	5,000	originally owned by one Swahili
(?)	?	(?)	5,000	
(?)	?	(?)	5,000	
(?)	?	?	5,000	Nearly three-quarters owned by one Kikuyu, who bought it from three Swahili.

In the view of the investigators there had already been considerable sub-division of the original holdings as "purchased" from the Swahili. Concerning location (14) Beech remarked that it "was interesting as it consisted of nine forest land to which the Wa-Kikuyu had emigrated not [illegible] more than 10 years ago. Such as are here live side by side with the Swahili with whom they have to a large extent intermarried."

[illegible] [illegible] [illegible] [illegible]

[illegible]

[illegible]

[illegible]

Colonel [illegible], then Chief Native Commissioner, wrote in 1938 a memorandum, "Kikuyu Explanation of the Origin of the Gitutho and the Githathu System," in which he said:

"In the course of time, the Kikuyu got into touch with these people (the Dorobo), and, where possible, made friends with them .... These Dorobo lived on game, roots, and honey, and in order to collect the latter they hung honey barrels over wide areas of the forest. They had no cultivation. The limitation of their occupation was generally influenced by the presence of these honey barrels and by game pits. The Dorobo were few in number and their villages were scattered in the forest. Gradually the Kikuyu encroached for purposes of cultivation, and began to burn and cut down the trees. The Dorobo .... resented the intrusion by the Kikuyu, and demanded compensation for disturbance of their rights. Individual families paid the compensation demanded by the Dorobo accepting such compensation they made blood-brotherhood and afterwards lived side by side, the Dorobo allowing the Kikuyu to cultivate and the Kikuyu recognizing the rights of the Dorobo to carry on his way of living. In the course of time, members of Dorobo settled down as members of the Kikuyu community and took up cultivation.

"Many thousands of goats and cattle were paid by the Kikuyu to the Dorobo not all at once, but from time to time. The Kikuyu correspondingly occupied the forest area bit by bit. The Dorobo, having but little taste, save in the chase, to whom they paid goats and cattle for permission to reside among the trees. They also paid large amounts of ivory to the chief Laibon, [illegible], in payment of his fealty. Often joined the Kikuyu, and became members of the community when they gave up hunting and became cultivators.

"In order to avoid quarrels and fighting among themselves, the Kikuyu agreed that the particular member of the community who parted with his goats or cattle as compensation should be recognized as the person who had acquired the rights of any particular lands, and so, they argue, none can challenge the [illegible] rights are claimed. When Dorobo elected to remain a member

[illegible] of the Kikuyu community they consented to occupation of what land they occupied, and in course of time they bought and sold, amongst each other, gifts or wives. It is claimed that subsequent to this understanding between the Kikuyu and the Dorobo, it happened from time to time that in the case of a Dorobo still holding a large piece of forest a Kikuyu would obtain it from him in exchange for a girl or girls handed over as a wife or wives, but such a transaction did not mean that the Dorobo left the area. It simply meant that he transferred his rights to the Kikuyu concerned, and joined his community.

"The Kikuyu claim that in the foregoing manner they acquired the Dorobo rights ..."

[illegible] witness recorded his own opinion as follows:

"There is no doubt in my mind that whatever goats and cattle were paid to the Dorobo by the Kikuyu, the payment was in respect of abandonment of the hunting rights and the right to collect honey enjoyed by the Dorobo up to the time of the coming of the forest by the Kikuyu."

[illegible] Dorobo in the area [illegible] the Native Council, Mr. [illegible] Hon. Secretary, expressed the opinion that:

"... all that the evidence before the Commission (i) established

[illegible] an opportune Commissioner to investigate the Dorobo system in July 1932.

... the fact that the Kikuyu or Dorobo [illegible] might have had from time to time made payments to [illegible] not in payment for the land from the Dorobo, who [illegible] hunting and honey rights, with an conception of ownership in land or any idea of land as a marketable asset, but as a mere payment in view the dependence and need of the Dorobo and in order that they (the Kikuyu) might remain peaceably in occupation of the land they were then in occupation of ... I should imagine that they certainly never opposed themselves the fact the Dorobo were the owners of the land or could pass any title to it. Though it may be that one day we may be put there to consider themselves the owners by purchase."

[illegible] Section F1.6

The following is an extract from a contemporaneous account, also in [illegible], by [illegible] G.A. Grabham.

"Thats (the Kikuyu) methods of purchase from a people knowing nothing originally of money or lands, are obviously a later interpretation of early transactions, just as the feudal system is often alleged to have been conceived by modern historians."

Evidence taken by the 1932 Committee

The evidence given by the Kikuyu tribe on the issue of acquisition of their land to the 1932 Committee is contained in the following account.

"Question explained. The meaning does not exist in Kikuyu for discussion and is prepared to proceed.

"Question 1. How to which land was acquired.

In the very first place the country where here was occupied by Wandorobo who were hunters. (In this place the meaning cited for adjournment for discussion—adjourned for about 2 hours.) When the Kikuyu first came the hunters objected on the ground that the coming of these for cultivation would spoil their honey supply and drive the game away from the game paths and ways. They said if you want the land you must pay us for it and not otherwise agreed to pay. In the first place each Kikuyu who bought land consequently obtained a Wandorobo as a token of good faith. Then the Wandorobo who had been obliged found the price which might be 30 or 100 sheep. Then there was a ceremony of marking out the boundaries. First the present was paid over and then the Wandorobo (a figurative title and he Kikuyu) was supplied by the purchaser. This was slaughtered and the meat eaten by the ceremony of marking out. Then the Wandorobo and the very principal one his wants as many a holes in the ground which marked by having one of them four of other Wandorobo. Then a Kikuyu elder followed planting titles and also walks along the boundary, accompanied by a Wandorobo always. The Wandorobo did not conveniently and his whole duty. He usually received a goat, which might be sold apparently subsequently. Usually the Kikuyu only bought a goat, and bought more as he could afford it, as the land might be bought by another. If a man wanted to buy a larger area than he could pay for, he could

Each man fought for himself, even though he might have to get his friends to help him with cash as in the case of buying a wife. Occasionally the Akikuyu stayed on and was given a Kikuyu wife. Sometimes he accepted a Kikuyu girl instead of cash in payment in which case he had to stay. It was always an absolute sale and there was no possibility of redemption."

Witness Evidence taken by Land Commission

The African evidence before the Land Commission is very helpful. The witness when claims usually consist of conventional statements according to a set formula—"the tribe", now consisting of so many hundreds of people, many centuries ago bought each and each a piece of land (generally ill-defined) from a Dorobo called Ko-rokho for so many thousands of goats and a girl or son." The Commissioners remark that "They took evidence on several of these claims, which enabled them to understand the nature and issues of such claims generally. The evidence was very voluminous and conflicting and the Commissioners were of opinion that it was of no great assistance to them in arriving at any conclusions on the questions upon which they were called to express an opinion." Most of the oral evidence was an appeal to the emotions or a rigmarole of deceitful subtlety rather than a reasoned argument or straightforward statement of demonstrable fact. Many of the witnesses set out to do their reasoning or claims rather than logical or even reasonably credible. "We took to your country ones bought with the cost of people" asked one, and "Can the King understand that he has taken from us not only our land but our lives?" another. An original explanation of the Dorobo (probably not to be doubted in its principle) was attempted by one witness. "What about the people who came here?" he said, "Did they come because they heard that everybody was going to sell the land? The people called Dorobo at the site who sold the land [illegible] have seen the same people who came from Kikuyu, but they came altogether. But the Dorobo from whom the land here was bought were the people who came down five ahead of the others and had taken up the land and driven out the elephants and buffaloes and other game, clearing them with fires and arrows and digging gardens for the Dorobo, and the reason why they themselves sold the land is the agricultural people who came after and that they should be expected to have sold

and their cousins and for having to cross five and do all the hard work. "The 'Royal Kilkeys Society of Southern Ulaidia of Kilkeys' tried to exploit a similar misrepresentation. "From the beginning we were Seyses and Wilkes," they said, "closest of our kind we brought from Sweden, who were the original owners. The Swedes were a part of the Kilkeys tribe who were dwelling in the Caves, living on the meat and blood of animals, and the other part of the tribe brought it from Rome." Another witness demonstrated his credibility by giving his version of the list of the Kilkeys generations ago, which must have appeared to the Commissioners to be just about as relevant to their subject as a list of the Kings of Israel until the mortal comes to an end with the most emotional appeal — "are you going to reckon all my words so that there will be no more generations? ... My cry to you is for ninety generations, each generation to have two hundred to hand to their succeeding generation, and my cry is also to my generation to leave to the following generation if you do nothing about it." It seems to have escaped the witness that the dispossessed Swedes might have had something equally urgent to say on the subject and that the land by any conceivable or potentially just reckoning was owed as by the native generations on to the two succeeding them.

Canon Lindley's Evidence

Notice must be taken of the evidence given by the Rev. Canon Lindley to the Land Commission. Some years before (in 1858) he had written a letter to the Daily Leader of which two titles from which the following is extracted:

"I am unable to narrate quarrels as I thought that the idea of the Kilkeys having purchased their land for large numbers of cows and sheep is a fabled up affair, an 'fairy tale' ... If such were the case the Kilkeys would be a richer people indeed. So it is impossible to count the old men sitting and giving contradicting evidence with regard to the early history of their land tenure. Why! They actually had to pay the Swedes who may be considered a primitive form of money rent. They were charged, beside a rent, direct or indirect, or in English 'cattle murder rent.' This young man was one part of the tax claimed by the Swedes women for nothing in a law that brought taxes

[illegible]

[illegible] extinguish [illegible] of following paths, as the laws forbid native not exclusively parties to do, and in getting away as to lay by a stolen kind of weighing scale, while he extend the boundary of the land which was about to change ownership. Can anyone be so foolish as to suppose that they made up stories of this kind on purpose to dupe the Europeans and make them believe that they bought land from other natives? I am told by well travelled men that land means to a practically unknown thing among primitive tribes before the advent of the white man. If that is true, and I have no reason to doubt it, then I venture to think that this peculiar characteristic of the tribe discoverable by a study of their folk-lore, should be considered a matter of extreme interest, and not lightly thrown aside because it happens to conflict with preconceived ideas, and to some rules does not fall in with what one wishes to prove in the case."

In a memorandum to the Land Commission Lieut Lindley wrote:

"Coming now to the question as to whether there is any truth in the statements made by the Kikuyu that they purchased their land from the Dorobo I can only say that I was told this many years ago in my visit that as it is really was a fact and I could [illegible] never find anything to make me doubt it. I am absolutely convinced in my own mind that what they say about this is absolutely correct."

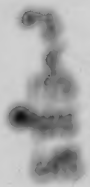
Findings of Land Commission

The Land Commission, like the Lyle Commission, found it difficult to come to any clear and conclusive as to the nature of the payments, if any, made by the Kikuyu to the Dorobo. The Commission had recorded:

"We could not define the exact significance of the claim that they 'bought the Dorobo out'. It is at least certain that payments were made, and the Kikuyu mention are the subsequent concessions to the occupation of area over which Dorobo families were hunted. This, which is all that is apparent in the purpose, is common ground."

The Land Commission expressed its general conclusions as follows:

"The vast majority of claims made to [illegible], tentative of various claims by the Dorobo. There are [illegible] cases in which the claim



[illegible] accompanied by a statement of the payments alleged to have been made. The average payment, according to the claims, [illegible] sheep and goats, 10s each, 1l for cows and goats as sheep, 5l cattle and a number of other things, while the whole total of recorded payments is 11l. 8s. 8d. goats, and the rest in sheep. We regard these figures as tentative and conjectural, whether we look at them from the standpoint of the number of goats that the Kikuyu are known to have possessed, or the grain-producing capacity of the Reserve, or compare them with the payments recorded in twelve Tribunal cases [illegible]. We do not suggest that these claims are deliberately false. There may be some which are true. No doubt there are also cases in which the claimants, being ignorant of the true history of land sales, were led many [illegible] encouraged witnesses by the general spirit of an aggressive claim is very evidently absent [illegible]. We feel that it would be rash for us to accept any detailed opinion on the witnesses' testimony given to the Native Tribunal [illegible]. We have not yet attempted that, in origin, they were payments for land or not. We can only say at this point that we are satisfied that payments of goats were sometimes made by Kikuyu in transactions for the purpose of alliance or peacemaking, that average price in these cases was often considerable and may originally have been the measure of the consideration, and that the use in terms of goats was by no means limited to the Kikuyu have experienced [illegible].

In twelve claims, where titles had been adopted by the Kikuyu witnesses in fact, while it is true that payments were made predominantly in the clearing proceeded and those according to the custom of land disputes, yet there was a proposal was to the land, and, though the payments were almost ever consecutive, or even not necessarily ancient, and the payments are irrecoverable. It seems improbable that the subsequent payments can be regarded as the balance of a stipulated purchase price, because some cases multiple land and the arrangements of that kind. The suggestion that the five payments can be the land and the other seven payments for the clearing is hard to accept, because we cannot conceive that the land would have been worth anything without the right to clear it, for a holding that the original

[illegible]

"Possibly the Gilbert Islanders had land rights in the Ocean Islands and so purchase from the Banabs would not work out very favourably for them, if it were used as the early support of their rights. The Banabs also reasonably contend: a) that the sales, generally speaking, are not proved, and that probably most of the land was not sold; b) that the obligations of protection contained in these Gilbert adoptions was not carried out, and that, in case as the Gilberts had got the land, the Banabs are entitled to be obliged' as the Gilbert Ordinance contained in the 1938 Commission; c) that the alleged 'sales,' when they took place at all, were not final, but only redeemable loans, as the custom of Gilbert Islanders proves, and that the alleged final payments are not generally agreed by the Banabs and did not reach many of them; d) that in many cases they are still partners in the land; and e) that, when and in so far as they still hold, they frequently reserved a place for themselves, as the Gilbert Land Tenure Report admits.

"We don't see why the responsibility of pronouncing on these questions, but we think that, if the Gilberts were fully to realize their implications, they would be too ready to raise that every land question should be decided on historical grounds and would be more willing to concede something to the claims of beneficial occupation.

"In a process which covered, as we have seen, partly of alliance and partnership and partly of adoption and absorption, partly of payment, and largely of force and chicanery, the Gilberts had already succeeded the Banabs when Queen Victoria granted through Gilbert land in 1887 ...."

It is to be remarked, however, that the Land Commission's findings that the process of succession contained "largely of force and chicanery" does not entitle us, however fully we accept that finding, to expect or even the Gilberts claim that the outright purchase of land was possible and in fact practiced. There is no doubt at all that valley land can be, and frequently is, bought outright by one Gilbert from another in the Ocean Islands, but, as every District Officer who has served there knows only too well, to obtain land by chicanery or even force rather than by purchase is an integrative component in modern Gilbert ideas.

adoption ceremony the transaction was placed on a legal basis for both parties and became absolutely binding." (3)

1. In Kilbane unpublished study of the Ibeliono Ndoro.

(i) Meaning of words used

By the European investigators of the Ndoro method of acquiring land three statements we have recorded as that a very general use of words which usually mean to us some form of outright, irrevocable exchange (Boyce: 'purchase'; Routledge: 'paid for the land'; Fuller-Smith: 'sold'; Lovibond: 'bought or borrowed'; McClure: 'rented'; Eyre: 'bought me'; Northcote: 'purchased'; Dobbie: 'bought'; Beech: 'purchased'; Ainsworth: 'paid'; Watkins: 'purchased'; Cases Lindley: 'bought'; 1918 Commission: 'payments'; Land Commission: 'succeeded the Ibedie'; Dr. Lindley: 'bought'). Several of these investigators qualified the expressions they used to us so even such affirmed or suggested that they did not necessarily mean literally an outright irrevocable transfer of land in the European sense (Northcote: 'the right to hill trees and to cultivate and the right to live in peace'; Beech: 'on piece of peace'; Ainsworth: 'in respect of dominance'; Watkins: 'obviously a loan interpretation'; 1918 Commission: 'more explanation are defined'; Land Commission: 'by a process partly of alliance and partnership, and partly of adoption and absorption, partly of payment, and largely of force and discovery'). There is a lack of definition in the recorded statements of Boyce, Routledge, Fuller-Smith and McClure. Lovibond's account appears to imply outright purchase but is not entirely clear on the point. Eyre and Dobbie seem to have understood their informants to refer to outright purchase, and Cases Lindley and Dr. Lindley are both absolutely correct that the payments to the Ibedie involved an irredeemable transfer of land ownership, equivalent to a transfer of the freehold in our own system.

(ii) Diffusion in assessing value of evidence

There were and are obvious difficulties confronting enquirers. It is probable that in the early days the main difficulty was simply one of interpretation. Latterly the chief problem has been a political one—it has become necessary to assess the value of

Northern 70 G-0 (ca. 1935-1950) 1950 FL10 Kikuyu FL10
Dorobo FL6

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174

will seek adoption there. The first faint-hearted trickle of Kikuyu from Murungu to the south possibly did this, but when the effective exodus began the Kikuyu could have gained the confidence inspired by numbers. They would start settlements and set about the clearing of the forest without the leave of anyone. Then the Dorobo would appear and enter an objection to this encroachment on their means of livelihood. Quite possibly a few Kikuyu had already died from poisoned arrows loosed at them by unseen hunters who resented the intrusion on their hunting-grounds, and the Kikuyu settlements would have had to mount a constant guard by day and night to try to stop such murders, and would have had to provide armed warrior escorts every time their women went away from the homestead about their household chores. Neither the Kikuyu nor the Dorobo would have liked this state of affairs. The former wanted agricultural land, and peaceful penetration was the safest way to get it; the latter knew quite well a few occasional killings here and there among the interlopers would be of no avail; the encroachment would continue. The obvious answer was adoption, which, at least in theory, would give both peoples something of what they wanted. But the Kikuyu, arrogant by now by reason of their numbers—there was probably no more than one Dorobo family to a ridge—would claim that the adopting should be done by them, they being the only party with the power to guarantee protection to the other. But the rite itself entailed no sale of any kind and no exchange of property. The one exchange was that of vows involving a unity of clan, a community of wealth, the sharing of resources, reciprocal assistance, mutual trust and an unstinting aid by either when the other was in need—in fact the obligations common decency and custom and the law recognized of close relations in the gens.

Acquisition by pledge

The second way was that of pawning cultivation rights in land against the temporary accommodation of loan of goats. This was the so-called redeemable sale of all the other tribes within the Unit, including the Kikuyu to the north. There can be little doubt that when the Kikuyu from Murungu crossed the Chania they brought their

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174
425
426

customs with them, and these did not include an outright sale—transfer in perpetuity—among Kikuyu. This in itself does not at once rule out the possibility of some tradition or of a tribal memory of outright purchase from Dorobo, nor are we justified, because the present outright sale in Kiambu is thought to have its origin in outright purchase from Dorobo, in arguing the other way round and finding that the lack of outright sale among the Kikuyu of Fort Hall means that there never was an outright purchase from Dorobo in that district.

K Implications of adoption

177
425
517

None the less the way in which the Kiambu Kikuyu claim to have got their land—by outright purchase—can only mean they got it by outright purchase from Kikuyu, that is if we accept it as a fact that a pre-condition of such purchase was adoption. If, in such a case, there were outright purchase, then it was in law an outright purchase by a Kikuyu from a fellow-tribesman, and consequently was contrary to the custom the Kamba people brought with them across the Chania. I have been assured by many Kamba men, both young and old (mostly the latter), that the Metume custom was still their law until fairly recent years, and that the change was brought about after the intervention of the British—some say that the Government inaugurated it, others name the Government-appointed Chiefs who, they assert, forced the change on tribesmen none too certain what its implications were, still others link it with the [illegible] change of currency, money instead of goats, but all who hold the view that there was a change in custom on the point relate it directly or indirectly to the general change in outlook attendant on the European advent.

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425
517

In any case the Kiambu Kikuyu cannot maintain that both these customs, outright purchase and adoption, were observed in one transaction, for the two are incompatible. One cannot make another man a member of one's family, swear to protect his interests and in every way to treat him as one's own full-brother, and then exclude him absolutely from a share in any portion of the family land, at least not honestly. One might invoke a legal fiction hold that the piece of land he "sold" to one became one's share of family land, the piece he failed to "sell" remaining his, but no Metume custom gives a brother any right of absolute and irredeemable disposal of

J. Lonsdale — 40 C-1 (ms. 1955-1958) 1958 Kikuyu Folk
Journals (5)

9 2
178
175
147

The oath

It is not suggested that the Kikuyu deliberately set down and ob-
viously damning an adaptation of the rites of aggregation known to three
and hundred tribes with the express intention of discovering a formula
to suit their book, nor is it suggested that an astute Kikuyu brain would
be incapable of inventing some new system which would give them
at one transaction what they wanted. But the Kikuyu had to be
reckoned with, and they were a people certainly no less conservative
than the average tribe; any startling innovation or any pattern of be-
haviour not readily related to established custom would be rejected.
If the Kikuyu had in fact invented some new rite which gave them
absolute and unconditional ownership of land, and if the Dorobo had
in fact accepted it, we should certainly expect the detail of the rite
to make it clear that outright purchase was an essential part of it and
understood by both. But there is nothing in the wording of the oath
the parties swore (as recorded and translated by Dr. Leakey in his
study of the Southern Kikuyu) which clarifies this point. The Kikuyu
party swore as follows. —

"1. As for me, if any man draws blood of this my Mwathi and
kills him, and if I do not cause him pay me a full hundred (pure
and sheep understood) may I break this (1).

1. Presumably a misprint for "may I break
this," i.e. "may I be broken like this."
The K.kuyu is ndirorukie ugwo.

2. As for me, if I should ever call him a Mwathi, or suggest
that he is not a Kikuyu like myself, may I break this.
3. As for me, if I should fail to treat him as the son of my own
mother, may I break this.
4. As for me, if I should ever seek out someone and get them
to kill him in order that I may acquire his land from him without
paying for it to the full, may I break this.
5. As for me, if any other family should try to enter illegally
the land that I am going to buy from this Mwathi who is per-
forming this adoption ceremony with me, and if I fail to sue
him for so doing, may I break this.
6. As for me, if I should fail to give him a present of so many

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible] [illegible] [

[illegible]

[illegible]

[illegible]

[illegible]

> [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

would confer on right to land except perhaps a meagre one of cultivation only. The marriage of a Dundas to a Kikuyu girl, the 'bride-price' being paid in land, would in theory be impossible because it would mean a double share and that was obviously to both Kikuyu and Dundas custom, though marriage by exchange of girls between two groups is not a common [illegible] quite unknown in primitive society (1), and some of the Fan (sic) tribes say that many

> 1. Cf. Briggs's story, the Fiji tribe in case by one of its members transacted and answered by Dupon Law," 1908. "If the practice of exchange marriage Dr. Van remarks, "It is, at the least, an instance of persistent importance, and lies at the base of the whole present tribal organization." According to the Fiji theory of exchange, daughters bear children to their father's family by giving. Dr. Van says, "The most probable explanation ... is that it represents an unconscious attempt to reconcile the patrilineal and matrilineal principles." Cf. also C. G. Seligman in "Marriage by exchange in Nigeria," Africa, January 1928. "... it may be said generally that one of the main reasons for the abandonment of marriage by exchange is that women now claim the right to marry anyone they please."

years ago, land being plentiful and grass scarce, a girl was rarely handed over as the "purchase-price" of land among Kikuyu, others declare that this could not be done at all. But I doubt if we can rule this method, which would sometimes mean alliance with a family rich in grass, completely out, although it would entail an infringement of the strict Dundas law. We have seen that such a union would become a matrilocal marriage. It would serve to keep the husband close at hand and make him something of a drone, dependent, leading a lazy life and liable to degeneration. As a long-range method of absorption it would be of some effect.

Another method of acquiring land was that of compensation for a homicide—"blood-money." Theoretically the land would be

redeemable to grant to others. One of the elders, however, have at least a vague idea that land or kindred was sometimes always be redeemed, and the two full elders say that in the early days before debt land was fully accepted, when goats were hard to come by, blood money was sometimes paid to land, which land could never be redeemed after the formal handing over.

The only other method we have mentioned is the exchange of land in accordance with the rules governing exchanges of objects within the reciprocity-enabling class. This, in Gwoka law, was to all relevant aspects a similar transaction to the marriage of a girl, which is itself an exchange of objects within that class. This was the only regular and fully recognized method by which a piece of land could be transferred in perpetuity, and it involved conditions precisely similar to those involved in marriage. The medium of exchange was just the same in both, whether another object in the reciprocity-enabling class or a "spiritual currency" put inside that class by reason of its function. In the strict Gwoka law, as I have said, the payment of "bride-price" in land or "land-price" in brides would be impossible but we cannot altogether rule it out since the Gwoka had degenerated fully into pre-Kikuyu.

Incidentally, if we accept the theory that the regular method of land "purchase" from Gwoka by Kikuyu was a transaction in the reciprocity-enabling class analogous to marriage, we shall not be surprised that, in Canon Leakey's words, "it is impossible to catch the old men slipping." If one asks an old Kikuyu, "Did you really buy [your] Gwoka land?" he will answer, quite truthfully, "Yes." —"Was it redeemable, returnable or defined?" "No." —"Once it was bought it was bought for ever?" —"Yes". —"And it was your completely?" "Yes." If, knowing something of the African custom of "bride-price," one asks similar questions about marriage and gets precisely the same answers, one will not feel the least surprise. And if, in discussing land transactions, we always get these very answers [p. 145] and find ourselves surprised, the reason is that we have failed to disabuse our minds of preconceived ideas, we give a totally different meaning to the words the old men use and come to the conclusion that their story (as understood by us) must most surprisingly be true, or that the old Kikuyu are astonishingly adept at co-operative falsehood. Both conclusions, based solely on the conformation,

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425

would be wrong. We have failed to catch the old men tripping, but they unwittingly, have caught us tripping badly.

Functional irredeemability

If we exclude the payment of "blood-money" (and smaller compensations of that nature) none of the methods mentioned transferred perpetual exclusive rights in land except the last—the "marriage" of it. All the rest of them transferred was nothing but a temporary cultivation right or else a share in user of the family land. But possibly there were differences between the theory and the fact of function. Goats to the Dorobo in those early days were food; they were in the consumable, ephemeral class of objects. A Dorobo given goats did not thereby acquire a store of continuity-enabling objects which could be drawn on as required for continuity-enabling; he did not bank the goats as spiritual resources. If he got a Kikuyu relative to herd them for him—herding was to him and his an unattractive occupation not included in their culture—the flock was treated as a larder, not as an investment in eternity. So that when, if ever, the question of redemption of a piece of land arose the Dorobo could not possibly accomplish it except by raising yet a further loan of goats, which meant, in general, handing over still more land, which was the only object the Dorobo had for which the Kikuyu would exchange their goats. So that such a piece of land, although redeemable in theory, was rarely so in fact, and the gap between the two ideas of irredeemability and impossibility of redemption was not so wide as to remain unbridgeable by a native mind conditioned by a change of habit. And land subjected to Kikuyu agriculture was, in Dorobo eyes, scarcely worth redeeming. The factual irreversibility of land transactions was a functional phenomenon and would soon assume a potency in practice exceeding that of any legal sanction no longer functional. This would no doubt operate as a check on the "redeemable sale" of land, which was in any case a new idea to the Dorobo, and one which, if their elders nowadays can be believed, they never had, in fact, accepted.

Effect of cultural differences

As to land acquired by means of new relationships between Kikuyu and Dorobo families such as those of ritual brotherhood and

S:Lambert--127 G-5 (ca. 1935-1950) 1950 FL10 Kikuyu FL10
Dorobo FL6
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425

quasi-marriage, it would not be long before a strain arose between the parties so united. One can imagine how the Kikuyu must have seen their continuity-enabling goats put to a base ephemeral use by their Dorobo relatives with anything but pleasure, how the never-ending need of sacrificial beasts for carnivoracious satisfaction, not for sacrifice, must have seemed to them outrageous. If the Dorobo diet had been much the same as theirs they would not have grumbled —much. Food to Kikuyu meant the products of their fields and gardens, for although a bit of mutton shared on rare occasions with their "gods" or relatives-in-law, and fairly frequently with brother judges of the local bench, was much appreciated, on the whole their diet was a vegetarian one. Once more the fundamental trouble was the clash of cultures—continuity-enabling and nutritional.

In the first relationship (brother-adoption) the Kikuyu elder brother (for the adoption was a unilateral one) would not be slow in pointing out that his Dorobo younger brother had become to all intents and purposes Kikuyu, and that Kikuyu customary law forbade the begging of a goat by one Kikuyu from his brother except for some sufficient [p.150] reasons such as sacrifice or continuity-enabling; when a brother killed a goat the other brother would be asked to help him eat it, but that was rare, not an every other day event such as his adopted brother seemed to think it. After all, no good Kikuyu (albeit an adopted one) would think of goats as food. Food was grain and roots and herbs, not goats.

And in the other (quasi-marriage) the Kikuyu would insist that if the "marriage" of a piece of land was similar in all respects to the marriage of a girl it must be similar in all respects. Payment for a bride did not go on forever—uthoni yes, but payment, no. Occasional gifts of meat, and even goats if the group-in-law required them for some continuity-enabling purpose—that was only right and proper, but constant goats to eat! Ridiculous! So he would make an end of payments, stop the unprofitable flow of goats, and see what happened. Nothing happened; a girl might leave her husband, taking her children with her, to satisfy a disappointed father. But the land could not do that. And as to "bride-price," the hungry carnivore could not return it to his son-in-land (1), for had he not

1. It is difficult to find a phrase in English to express succinctly the relationship set up

5:Lambert--128 G-5 (ca. 1935-1950) 1950 FL10 Kikuyu FL10
Dorobo FL6

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by a land uthoni. I use "son-in-land," etc., to illustrate the similarity with "son-in-law" etc., but to show at the same time that the relationship is based on land exchanged, not marriage.

consumed it long ago?

That something of this nature really happened is evidenced by the stories of old Kikuyu living near the Chania. Brother-adoption, so they told me, would provide Kikuyu immigrants with a right to cultivate, but the only way to "purchase" land in perpetuity was to "marry" it. This was the general method of acquiring land. A Kikuyu could not "marry" land belonging to a man whose daughter, if he had one, would be within the prohibited degrees of matrimony; so an adopted brother would either have to satisfy himself with the cultivation right and share in ownership he got by brotherhood, or "marry" land elsewhere. The Kikuyu went on handing over goats to their relatives-in-land for a lengthy period of time, but in the end got tired of it, and some of them insisted that a final payment should be made. According to one account this was, near the Chania, in the Maina generation-age (1875 A.D. or thereabouts).

In areas where the "purchases" were on the whole more recent (the south and west of Kiambu) a similar state of affairs was reached a good deal later, and probably brought to a head by Kinyanjui, afterwards Paramount Chief, who, according to the evidence of Senior Chief Koinange in an Appeal Case (quoted by the Land Commission) had "made a brotherhood-adoption ceremony with Waweru" —a Dorobo—"and made him a sort of chief of the Dorobo. Then Waweru told his people that the old sales of land which his people had made to the Kikuyu were not valid, and that there should be a second purchase ... this second purchase was final." It seems likely that Kinyanjui (Mr. Hall's "fidus Achates") (2) had had his ideas of

2. The late Frank Hall, who founded the station now named after him, Fort Hall, at Mbiri in Metume, referred to Kinyanjui thus in correspondence, copies of which are in the Fort Hall District office.

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425

finality strengthened by observation of the European system and was, somehow or other, in a position to enforce them with the assistance, whether willing or unwilling, of his Dorobo puppet chief, Waweru. The Land Commission comments that the Dorobo could reasonably contend, among other things, "that the alleged 'sales,' when they took place at all, were not final, but only redeemable loans, as the action of Chief Kinyanjui proves, and that the alleged final payment was not generally agreed by the Dorobo and did not reach many of them..." If for "not final, but only redeemable loans" we substitute "not outright, but, in a few cases, only redeemable loans, and, in the rest, [p. 15] uthoni transactions conditioned by the rules of marriage," we shall, I think, have a somewhat truer picture of the facts.

Conclusions regarding acquisition in Kiambu

We are now in a position to formulate conclusions with regard to acquisition in Karura. Our conclusions are:—

1) that the common method of acquiring land was by exchange within the continuity-enabling class, which exchange created a condition of uthoni so similar in effect to that created by marriage that, having full regard to the native understanding of the functional relationship set up, we shall not be using a misleading term if for convenience and the want of a better word in English we call it "marriage of the land";

2) that a share in ownership, as contemplated in the native law, was acquired in certain cases by a brotherhood-adoption;

3) that various other methods of acquiring land were rarely practiced and consisted theoretically in temporary transactions reversible at will, although in point of fact such rare transactions operated functionally as irreversible; and

4) the Kikuyu statement that an outright irreversible exclusive purchase was effected by a brotherhood-adoption and the payment of a stipulated price in goats or girls is not to be believed.

My answer to the question as to whether Kikuyu immigrants bought or could buy land in the Kiambu District from Dorobo in any sense approaching the transfer of a freehold as understood in English law is definitely "no."

561 /244 cont./
191 elephants, buffalo, and lions, has distinguished himself through
224 courage and decisiveness and who shows these qualities anew again
555 and again is elected kirigit.

881 About the circumcision of the girls, it is only to be said that, adorned, a few days before the operation they set out for the neighboring camps to bid farewell to their younger girl friends. On these
[425] visits they are permitted to appropriate anything that they wish (food, clothing, ornaments, etc.), without special permission from the owners.

Concerning the reason for the circumcision the Asá also say that God commanded them to undertake this on their children.

/245/ VIII.

000 Hunting. -- The weapons, bow, arrow, hunting spear. -- Ownership marks. -- Preparation and effect of the arrow poison. -- Treatment of arrow wounds. -- Stalking. -- Hunting dogs. -- Station. -- Battue hunting. -- Practice of hunting. -- Game. -- Superstition. -- Meat meals of the hunters in the bush.

411 For the dobonog of the Wandorobo hunting is what war is for the
[561] El móran of the Masai. Their principal weapons are bow and arrow.
[224] The two-sided bow ([Fig. 83] gari, geleweg) has the shape of a flattened segment of a circle. It is as a rule 1.50 meters long and very sharply flexible. With it belongs a leather quiver ([Fig. 85] madiet, madimoig) with arrows ([Fig. 84] mat, mara). The wooden arrow-shaft bears a small notch on its rear end for setting it on the bow string, and directly in front of it the three-part feathering (haiya).
[439] The iron point, which the Wandorobo usually buy from Wakuafi and Masai blacksmiths, but also from sedentary Negroes, and more

423 /260 cont./

The individual person does not have an exclusive right to land or to the use of hunting grounds. Rather, both are common property.
224 421 Only one half of any slain game down to the size of a medium antelope belongs to the hunter and his campmates together, while the other half of a male animal is given to the members of his lineage, those of a female one to the relatives of his wife or wives: in both cases: insofar as those entitled to receive it live in the immediate vicinity. Of the two tusks (ligatok, ligasch) of the elephant each
[178] receives half. Recently, the large teeth of the hippopotamus have been shared in the same manner, whereas formerly /261/ they were left lying, along with the bones. For the horns (hadong, hadama) of the rhinoceros the hunter receives in exchange poison or arrow points and then distributes these things among the people who previously were to share the meat of the animal. The hides of the slain game belong to the hunter.

All smaller game belongs entirely to the hunter and his campmates.

421 Property belongs to the single individual, not to the family
• 425 community. A lost article is returned to the owner, without the finder's claiming a reward. There is no punishment for the appropriation of found articles.

43 There is no general medium of exchange. Money has not yet been adopted anywhere. Goods are always exchanged for goods. For ivory the caravan people pay cattle, goats, sheep, iron wire, beads, fabrics. In the individual barter transaction the Wandorobo never want one kind of goods above, but always several, and of the inanimate ones as many different kinds as possible. The exchange takes place with immediate delivery and is made valid by spitting on the objects. Only exceptionally is a brief delay granted for a
452 426 small part of the payment. The creditor seeks to have himself paid by a dilatory debtor through self-help, and only if he has no success with that does he make a complaint. It not infrequently happens
[583] that the creditor takes a small daughter of the debtor as security, and a marriageable one as a wife; in the latter instance, he deducts the amount of the debt from the bride price. The debtor's heir is liable,
[672] and, to be sure, for the entire debt. With the debtor's inability to pay, the warrantor is liable, if -- which is seldom the case -- one is present at all. The heir of the warrantor is also liable.